

UNITED STATE BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Daniel S. Miller,

Debtor.

Bky. No. 04-60106
Chapter 11

OBJECTION OF CONAGRA FOODS, INC. TO PROPOSED
PLAN OF REORGANIZATION

1. ConAgra Food Ingredients, a division of ConAgra Foods, Inc., d/b/a ConAgra Grain Companies (hereafter “ConAgra”) by and through its undersigned attorneys, objects to the confirmation of the Plan of Reorganization proposed and filed by the Debtor Daniel S. Miller.
2. This Objection is filed pursuant to Bankruptcy Rules 3020(b) and 9014 and Local Rule 3020. This Objection is made pursuant to 11 U.S.C. §§ 365, 1123, and 1129. This Objection is supported by the accompanying Memorandum of Law.
3. ConAgra, under its operating name of Peavey Co., did business with the Debtor under his operating name of Danielson Grain.
4. On August 8, 2003, ConAgra and the Debtor entered into a contract for the sale of 25,000 bushels of wheat from the Debtor to ConAgra (“Wheat Contract”). The Wheat Contract required delivery in December, 2003. On October 13, 2003, ConAgra and the Debtor entered into a contract for the sale of 5,000 bushels of soybeans (“Bean Contract”). The Bean Contract required delivery in December, 2003. Copies of both the Wheat Contract

and the Bean Contract are attached to the proof of claim filed by ConAgra and attached hereto as Exhibit A.

5. The Debtor failed to deliver 14,945.85 bushels of wheat during December, 2003. The Debtor failed to deliver 2,098.34 bushels of soybeans in December, 2003. Pursuant to the terms of the contract, ConAgra suffered damages in the amount of \$11,770.00 to replace the grain which the Debtor failed to deliver pursuant to the contracts.
6. An involuntary bankruptcy was filed against the Debtor and the Debtor converted the involuntary case to a case under chapter 11 of the Bankruptcy Code. The Debtor filed a proposed Disclosure Statement and Plan of Reorganization. On July 6, 2004, ConAgra filed a proof of claim as a secured creditor in the amount of \$11,770.00.
7. The Debtor rejected both the Wheat Contract and the Bean Contract.
8. ConAgra has a right to set off arising under § 553 of the Bankruptcy Code in the amount of \$11,770.00.
9. The Plan does not properly treat the secured claim of ConAgra. On July 6, 2004, ConAgra filed a proof of claim as a secured creditor in the amount of \$11,770.00. The proof of claim is docketed as Claim No. 132. The Plan does not provide for any treatment of the secured claim of ConAgra.

WHEREFORE, ConAgra requests this Court deny confirmation of the proposed Plan of Reorganization dated June 14, 2004.

Dated: September 22, 2004

FOLEY & MANSFIELD, P.L.L.P.

/s/ Thomas J. Lallier
Thomas J. Lallier (163041)
250 Marquette Ave.
Suite 1200
Minneapolis, MN 55401
(612)338-8788

ATTORNEY FOR CONAGRA

UNITED STATE BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Daniel S. Miller,

Debtor.

Bky. No. 04-60106
Chapter 11

MEMORANDUM OF LAW IN SUPPORT OF OBJECTION TO CONFIRMATION

ConAgra Food Ingredients, a division of ConAgra Foods, Inc., d/b/a ConAgra Grain Companies (hereafter “ConAgra”) submits this Memorandum in support of its objection to the confirmation of the proposed Plan of Reorganization.

BACKGROUND

ConAgra, under its operating name of Peavey Co., did business with the Debtor under his operating name of Danielson Grain. On August 8, 2003, ConAgra and the Debtor entered into a contract for the sale of 25,000 bushels of wheat from the Debtor to ConAgra (“Wheat Contract”). The Wheat Contract required delivery in December, 2003. On October 13, 2003, ConAgra and the Debtor entered into a contract for the sale of 5,000 bushels of soybeans (“Bean Contract”). The Bean Contract required delivery in December, 2003. Copies of both the Wheat Contract and the Bean Contract are attached to the proof of claim filed by ConAgra and attached hereto as Exhibit A.

The Debtor failed to deliver 14,945.85 bushels of wheat during December, 2003. The Debtor failed to deliver 2,098.34 bushels of soybeans in December, 2003. Pursuant to the terms

of the contract, ConAgra suffered damages in the amount of \$11,770.00 to replace the grain which the Debtor failed to deliver pursuant to the contracts.

An involuntary bankruptcy was filed against the Debtor and the Debtor converted the involuntary case to a case under chapter 11 of the Bankruptcy Code. The Debtor filed a proposed Disclosure Statement and Plan of Reorganization, both dated June 14, 2004. On July 6, 2004, ConAgra filed a proof of claim as a secured creditor in the amount of \$11,770.00.

The Plan of Reorganization provides, in Article VII Executory Contracts, that certain contracts are assumed. Among the list of contracts purported to be assumed in the Plan of Reorganization is the following:

Peavy	15,000 bu. wheat at \$3.70
4256 54 th Ave. N.	2,000 beans at \$6.90
Grand Forks, ND 58401	grain to be delivered

These are the Wheat Contract and Bean Contract between ConAgra and the Debtor.

ARGUMENT

Section 1129 of the Bankruptcy Code governs the confirmation of a plan of reorganization. Section 1123 provides restrictions on what the contents of a plan of reorganization may be. Pursuant to both those sections, the Plan of Reorganization propose by the Debtor can not be confirmed.

The Proposed Plan of Reorganization fails to provide for the secured claim of ConAgra.

ConAgra has a secured claim. A proof of claim was filed on July 6, 2004 listing the claim as secured. The plan of reorganization proposed by the Debtor does not provide any treatment for the secured claim of ConAgra.

Section 1129 governs the confirmation of a plan of reorganization. There are two alternatives for the treatment of secured claims which would allow confirmation of the plan of reorganization under § 1129(a)(7) and § 1129(b)(2). Those subsections provide that with respect to each impaired class of claims, (1) the holder has accepted the plan or (2) the holder will receive under the plan on account of such claim property of a value, as of the effective date of the plan, the indubitable equivalent of the claim. Applied to ConAgra, the plan must provide for ConAgra to receive property equal to the amount ConAgra would receive if the Debtor was liquidated. Because the Plan does not provide for any treatment of the secured claim of ConAgra, the proposed plan fails to meet the requirement of § 1129(a)(7). Accordingly the Plan should not be confirmed.

Dated: September 22, 2004

FOLEY & MANSFIELD, P.L.L.P.

/s/ Thomas J. Lallier
Thomas J. Lallier (163041)
250 Marquette Ave.
Suite 1200
Minneapolis, MN 55401
(612)338-8788

CONAGRA GRAIN COMPANIES

PEAVEY CO. ALLIANCE GRAIN CO. PEAVEY BARGE CO.
ATWOOD-KELLOGG CO. AGRICOL CONAGRA LTD.

**CONFIRMATION OF
PURCHASE CONTRACT**
701/775-8126

Grand Forks
PO BOX 13655
GRAND FORKS, ND 58208-3655

Our Contract
P018530

Contract Date
08/28/03

Your Contract No.

Purchased From

DANIELSON GRAIN
P.O. BOX 421

EAST GRAND FORKS MN 56721

Customer ID
20640

Merchandiser
BELINDA CROMPTON

Broker

Quantity
25,000.00

Commodity and grade
WHEAT-SPRING

Price or Basis
3.70000 PER BUSHEL

Delivery Basis
GRAND FORKS

Grades to Govern
DESTINATION

Weights to Govern
DESTINATION

☐ Shipment

☐ Arrival

FROM 12/01/03 TO 12/31/03

Discount Scale:

ALL DOCKAGE WILL BE DEDUCTED FROM WEIGHT
THIS CONTRACT NOT PROTECTED BY ND STATUTORY WARE-
HOUSMAN'S BOND IN THE EVENT OF BUYERS INSOLVENCY
PEAVEY SCHEDULE OF DISCOUNTS TO APPLY.
58 TW, 13.5 MST, FALL # 275-250 = -25, 250-200 = -50

Remarks:

1NS 14 PRO, 25000 BU WHEAT, 3.70/BU, DECEMBER DELIVERY, PRO= +1 EA 1/5
14-15, -2 EA 1/5 BELOW 14, ALL OTHER MARKET SCALE AT TIME OF DELIVERY

Unless otherwise exempt, this Purchase Order incorporates by reference the
EFC Clause contained in A1 C.F.R. Sections 60-1.4, 60-7.1.5 and 60-2.2.5
☐ Subject to the rules of the Minneapolis Grain Exchange ☐ Subject to the rules of the National Grain and Feed Association ☐ Other

CONTRACT AND CONFIRMATION OF PURCHASE

- Invoice in DUPLICATE on each unit separately. Show above confirmation number on all papers.
- No hydro-cushion cars to be applied.
- If price of grain is on a "Premium Basis," contract to be priced or spread prior to the last trading day preceding the first delivery day of the futures contract.
- Additional terms and conditions appearing on the reverse side hereof are applicable to this contract and are a part thereof.
- E. and O.E.

BY

Jeff Bloesch

"Wheat delivered under this contract must be free of karnal bunt (*Tilletia indica*) and will be subject to rejection if the same is detected by tests conducted by an independent lab of Buyer's choice. The wheat must (a) be merchantable; (b) not pose any food safety or quarantine risk to the Buyer; and (c) not be shipped from any area quarantined by the United States APHIS."

SELLER'S ACCEPTANCE

ACCEPTED _____

BY _____ DATE _____

Failure to advise us within 10 days of receipt of this confirmation will be understood by us as an acceptance of these terms. Buyer objects to the inclusion of any different or additional terms proposed by Seller. Please sign and return to us immediately the attached copy, retaining the original for your records.

CONAGRA GRAIN COMPANY
 PEAVEY CO. RELIANCE GRAIN CO. PEAVEY-BARGE CO.
 ATWOOD-KELLOGG CO. AGRICOL CONAGRA LTD.

**CONFIRMATION OF
PURCHASE CONTRACT**

701/775-8126

Grand Forks
 PO BOX 13655
 GRAND FORKS, ND 58208-3655

Our Contract No.
P018854

Contract Date
10/13/03

Purchased From

DANIELSON GRAIN
 P.O. BOX 421

EAST GRAND FORKS MN 56721

Customer ID

20648

Your Contract No.

Merchandiser

BELINDA CROMPTON

Broker

Quantity

5,000.00

Commodity and grade

SOYBEANS-YELLOW

Price or Basis

6.93000 PER BUSHEL

Delivery Basis

GRAND FORKS

Grades to Govern

DESTINATION

Weights to Govern

DESTINATION

☐ Shipment☐ Arrival

FROM 10/13/03 TO 11/30/03

Discount Scale:

ALL DOCKAGE WILL BE DEDUCTED FROM WEIGHT
 THIS CONTRACT NOT PROTECTED BY ND STATUTORY WARE-
 HOUSMAN'S BOND IN THE EVENT OF BUYERS INSOLVENCY
 PEAVEY SCHEDULE OF DISCOUNTS TO APPLY.
 SELLER WARRANTS GRAIN U.S. BROWN
 SOYBEANS, 1.0 FM ALLOWED, 56 TW, 13.0 MST

Remarks:

5000 bu soybeans, 6.93/BU, OCT-NOV DELIVERY, ALL OTHER MARKET SCALE
 AT TIME OF DELIVERY

Unless otherwise exempt, this Purchase Order incorporates by reference the
 EEO-1000 to the Uniform Grain Exchange C.F.R. 60-450005

CONTRACT AND CONFIRMATION OF PURCHASE

- Invoice in DUPLICATE on each unit separately. Show above confirmation number on all papers.
- No hydro-cushion cars to be applied.
- If price of grain is on a "Premium-Basis," contract to be priced or spread prior to the last trading day preceding the first delivery day of the futures contract.
- Additional terms and conditions appearing on the reverse side hereof are applicable to this contract and are a part thereof.
- E. and O.E.

BY

Wheat delivered under this contract must be free of kernel bunt (Tilletia indica) and will be subject to rejection if the same is detected by tests conducted by an independent lab of Buyer's choice. The wheat must (a) be merchantable; (b) not pose any food safety or quarantine risk to the Buyer; and (c) not be shipped from any area quarantined by the United States APHIS.

SELLER'S ACCEPTANCE

ACCEPTED _____

BY _____ DATE _____

Failure to advise us within 10 days of receipt of this confirmation will be understood by us as an acceptance of these terms. Buyer objects to the inclusion of any different or additional terms proposed by Seller. Please sign and return to us immediately the attached copy, retaining the original for your records.

TERMS AND CONDITIONS

- Except as modified or limited by the terms and conditions stated herein, this Contract shall be governed by and construed in accordance with the applicable rules and regulations of the exchange, board or association designated on the face hereof, or, if none is designated or Seller is not a member of said exchange, board or association, then the applicable trade rules of the National Grain and Feed Association in effect on the date hereof, and, to the extent not inconsistent therewith, the applicable provisions of the Uniform Commercial Code.
- Seller warrants to Buyer that all grain sold and delivered hereunder will be of good, sound, dry and merchantable quality in accordance with the grade specified herein; that it will have been grown in the Continental United States unless a non-United States grown clause has been made a part of this Contract and so stated on the face hereof; that it will not be adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, nor be a commodity which may not, under the provisions of Section 404 or 505 of the Act, be introduced into interstate commerce; that neither any such grain nor the shipment thereof will be in violation of or subject to penalty, seizure or lien under any other federal, state or local law, ordinance regulation quota or order; and that all grain sold hereunder will be delivered to Buyer free and clear of any and all liens, encumbrances, security interests, claims and penalties of any kind and nature.
- This contract is subject to reciprocal margin calls on 48-hour notice. The party giving margins may require that such amount be held in escrow.
- Each Party consents to the recording of all telephone conversations between its representatives and the representatives of the other Party.
- This Contract is made on the basis of freight rates in effect on the date hereof. Any increase in freight rates taking effect before the full performance of this Contract shall be for the account of Seller unless otherwise adjusted and agreed upon between the parties at the time of the affected shipment.
- All shipments of grain hereunder shall be made by Seller to the place of delivery designated herein. Buyer may subsequently designate any reasonable alternate place of delivery to facilitate Seller's performance of this Contract but shall have no obligation to do so. Any increased shipping charges incurred under this provision shall be for Seller's account and any reductions in shipping charges shall be for Buyer's account; provided however, if the designated alternate delivery points are solely for Buyer's convenience, increased shipping charges shall be for Buyer's account.
- Unless otherwise specified, each shipment hereunder will be applied to the oldest open contract between Buyer and Seller.
- Buyer reserves the right to apply off-grade grain at market difference without first notifying Seller.
- Buyer's performance hereunder, or any delay in such performance, including the acceptance of deliveries of grain on the date or dates specified, shall be excused where such failure to perform or delay is attributable to any cause or reason beyond Buyer's control, including without limitation lack of available storage space, equipment breakdown, labor trouble, governmental regulations, transportation difficulties, embargoes, civil disturbances, acts of God, or any other causes of the like or different character beyond Buyer's control.
- This Contract is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms and conditions of their agreement. This Contract is limited to the terms and conditions stated herein, which terms and conditions shall prevail insofar as they might in any way conflict with any terms or conditions of Seller's confirmation.
- There are hereby incorporated herein by reference the respective Equal Opportunity Clauses set forth in 41 C. F. R. para. 60-1.4 (a), 41 C. F. R. para. 60-250.4 and 41 C. F. R. para. 60-741.4 to the extent the incorporation thereof is required by or necessary for compliance with applicable federal laws, regulations or orders. As used in such clauses, "contractor" shall mean the Seller hereunder.
- **CONTROVERSIES:** Controversies and/or other disagreements between Buyer and Seller arising under this Contract shall be settled by arbitration which shall be a condition precedent to any right of legal action that either Buyer or Seller may have against the other party. Any arbitration shall be in accordance with the rules of the National Grain and Feed Association [NGFA]. At the time notice of arbitration is served by either Buyer or Seller upon the other, [i] if either is a member of NGFA, the NGFA Arbitration Committee shall serve as the arbitrator; [ii] if neither is a member of the NGFA, the American Arbitration Association shall serve as the arbitrator.

Unsworn Affidavit of Service

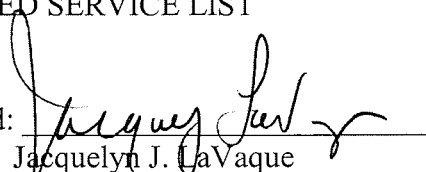
STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

I, Jacquelyn J. LaVaque, declare under penalty of perjury that on September 22, 2004, I mailed copies of the attached Objection of ConAgra Foods, Inc., to Proposed Plan of Reorganization by first class mail, postage prepaid, to each entity named below at the address stated below for each entity:

PARTIES ON ATTACHED SERVICE LIST

Executed on: September 22, 2004

Signed: _____


Jacquelyn J. LaVaque
Foley & Mansfield, P.L.L.P.
250 Marquette Avenue
Suite 1200
Minneapolis, MN 55401

*ConAgra Foods re: Daniel Miller, d/b/a Danielson Grain, d/b/a
Danielson Trucking
Bky. No. 04-60106 DDO
SERVICE LIST*

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KALER LAW OFFICE
PO BOX 423
FARGO, ND 58107

US TRUSTEE
1015 US COURTHOUSE
300 SOUTH FOURTH STREET
MINNEAPOLIS MN 55415

CRAIG PETERSON
2108 S. UNIVERSITY DRIVE
SUITE 102B
FARGO, ND 58103

LOWELL BOTTRELL
PO BOX 10247
FARGO ND 58106

CATHERINE TUCKER
VOLVO COMM FINANCE
PO BOX 26131
GREENSBORO TN 27402

ROBERT WOODKE
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BENNETT
1010 W. ST GERMAIN SUITE 600
ST. CLOUD MN 56301

UNITED STATE BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Daniel S. Miller,

Debtor.

Bky. No. 04-60106
Chapter 11

ORDER

This matter came before this Court for confirmation of the Debtor's Chapter 11 plan of reorganization. Appearances were noted in the record. Based upon all the files and records, the Court makes this Order pursuant to the Federal Rules of Bankruptcy Procedure.

IT IS HEREBY ORDERED, That confirmation of the Debtors' Chapter 11 plan is denied.

Dated: _____

United States Bankruptcy Judge